

19-076

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

---

THE IUOE LOCAL 57 HEALTH AND WELFARE FUND, James J. White, Chairman, and Stephen A. Cardi, Steven Rogers and Michael D. D'Ambra, Trustees; THE IUOE LOCAL 57 PENSION FUND, James J. White, Chairman, and Antonio B. Cardi, Steven Rogers and Michael A. Gammino, III, Trustees; THE IUOE LOCAL 57 ANNUITY FUND, James J. White, Chairman, and Antonio B. Cardi, Steven Rogers and Michael A. Gammino, III, Trustees; THE IUOE LOCAL 57 LEGAL SERVICE FUND, James J. White, Chairman, and Michael A. Gammino, III, and Steven Rogers, Trustees; THE IUOE LOCAL 57 APPRENTICESHIP FUND, James J. White, Chairman, and Steven Rogers, Stephen A. Cardi and Brad Bilodeau, Trustees; THE IUOE LOCAL 57 UNION ADMINISTRATION FUND, James J. White, Chairman and Steven Rogers, Trustee; THE IUOE LOCAL 57 POLITICAL ACTION AND EDUCATION FUND, James J. White, Chairman, and Steven Rogers, Trustee; THE IUOE LOCAL 57 INDUSTRY ADVANCEMENT FUND, James J. White, Chairman, and Michael A. Gammino III, Trustee; and THE IUOE LOCAL 57

*Plaintiffs,*

v.

C.A. No.: 1:19-cv-

ROSCITI CONSTRUCTION COMPANY, LLC

*Defendant.*

---

**COMPLAINT**

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, brought on behalf of the International Union of Operating Engineers Local 57 ("IUOE Local 57") Health and Welfare Fund ("Health Fund"), the IUOE Local 57 Pension Fund ("Pension Fund"), the IUOE Local 57 Annuity Fund ("Annuity Fund"), the IUOE Local 57 Legal Service Fund ("Legal Fund"), the IUOE Local 57 Apprenticeship Fund ("Apprenticeship Fund"), the IUOE Local 57 Union

Administration Fund (“Administration Fund”), the IUOE Local 57 Political Education and Action Fund (“PEAF”), and the IUOE Local 57 Industry Advancement Fund (“Advancement Fund”) (hereinafter collectively “Funds”) for damages and injunctive relief arising from unpaid and delinquent employee benefit contributions.

2. This court has jurisdiction pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and the Labor Management Relations Act, § 301, 29 U.S.C. §185(c).
3. Venue lies in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), as the Plaintiffs seek to enforce an agreement entered into by the Defendant in Rhode Island and pursuant to LMRA § 301, 29 U.S.C. § 185(a) as IUOE Local 57 has a principal office at and is administered from 857 Central Avenue, Johnston, Rhode Island.
4. Plaintiff, James J. White, is the Chairman of the Funds.
5. Plaintiffs, Stephen A. Cardi, Steven Rogers and Michael D. D’Ambra, are trustees of the Health Fund.
6. Plaintiffs, Antonio B. Cardi, Steven Rogers and Michael A. Gammino, III, are trustees of the Pension Fund.
7. Plaintiffs, Antonio B. Cardi, Steven Rogers and Michael A. Gammino, III, are trustees of the Annuity Fund.
8. Plaintiffs, Michael A. Gammino, III, and Steven Rogers, are trustees of the Legal Fund.
9. Plaintiffs, Stephen A. Cardi, Steven Rogers and Brad Bilodeau, are trustees of the Apprenticeship Fund.
10. Plaintiff, Steven Rogers, is the trustee of the Administrative Fund and the PEAF.
11. Plaintiff, Michael A. Gammino III, is the trustee of the Advancement Fund.
12. Plaintiffs, James J. White, Stephen A. Cardi, Michael A. Gammino III, Steven Rogers, , Michael D’Ambra, , Antonio B. Cardi, Timothy E. Quillen, and Brad Bilodeau (hereinafter collectively “Trustees”), are "fiduciary" within the meaning of ERISA, 29 U.S.C. § 1002(21)(a) as they are appointed to oversee the Funds.
13. As fiduciaries, the Trustees are empowered to bring this action pursuant to 29 U.S.C. 1132(a)(3).
14. The Funds are "multi-employer plans" within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C, § 1002(37)(A) and "employee benefit plans" or "plans" within the meaning of Section 3(3) of ERISA, 29 U.S.C., § 1002(3).
15. The Funds have a principal office at and are administered from 857 Central Avenue,

Johnston, Rhode Island.

16. The Funds are authorized to bring this action pursuant to 29 U.S.C. §1132(d)(1).
17. IUOE Local 57 is a "labor organization" within the meaning of the National Labor Relations Act, 29 U.S.C. § 152(5), and is a duly organized and recognized employee organization under 29 U.S.C. §1002(4).
18. IUOE Local 57 is authorized to bring this action pursuant to 29 U.S.C. 185(b).
19. Defendant, Rosciti Construction Company, LLC, is a Rhode Island limited liability company with a principal place of business located in Johnston, Rhode Island (hereinafter "Rosciti").
20. Rosciti is an "employer" within the meaning of 29 U.S.C. § 1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. § 152(2), (6) and (7).
21. Rosciti is a signatory to one or more collective bargaining agreements with IUOE Local 57.
22. At all material times Rosciti was obligated to pay wages and benefits to employees pursuant to the terms of one or more collective bargaining agreements between it and IUOE Local 57.
23. The Funds are established and administered by agreements and declarations of trust, as amended.
24. At all materials times Rosciti was bound by the terms of the agreements and declarations of trust, as amended, that establish and administer the Funds.
25. Pursuant to said agreements, Rosciti must pay interest on all delinquent contributions from the date payment was due, plus reasonable attorney's fees, sheriff's costs and accounting and court costs.
26. The Funds caused a Payroll Compliance Audit to be conducted of Rosciti for the Plan Year 2016.
27. Said Payroll Compliance Audit revealed that for the Plan Year of 2016, Rosciti failed to make the required contributions to the Funds in violation of the agreements and Section 515 of ERISA, 29 U.S.C. § 1145.

WHEREFORE, Plaintiffs demand that judgment enter against the Defendant:

- A. Awarding the Funds the following amounts:
- i. the unpaid contributions to the Funds in the amount of \$23,615.67;
  - ii. the unpaid interest penalties for late payments;
  - iii. interest on said unpaid contributions at a rate of 1.5% per month from the date payment was due; and
  - iv. all costs and reasonable attorney's fees incurred by the Funds in connection with this action.

Respectfully Submitted,  
For the Plaintiffs,  
By their attorney,

*/s/ Ryan C. Hurley*

---

Ryan C. Hurley (7358)  
Kiernan, Plunkett & Redihan  
146 Westminster Street, 5<sup>th</sup> Floor  
Providence, RI 02903  
(401) 831-2900  
(401) 331-7123 (FAX)  
[rhurley@kprlaw.com](mailto:rhurley@kprlaw.com)

U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 2022

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the within complaint to be sent to the United States Department of Labor and the United States Department of the Treasury at the above listed addresses by certified mail in accordance with 29 U.S.C. § 1132(h).

8/2/2019  
Date: \_\_\_\_\_

Kayla Anderson  
\_\_\_\_\_